

COPY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2005 JAN -7 AM 11:07

IN THE MATTER OF:)	SETTLEMENT AGREEMENT FILED
)	EPA REGION VIII
Camelot Cleaners West Fargo Site)	HEARING CLERK
West Fargo, Cass County, North Dakota)	U.S. EPA Region 8
SSID # 08-DE)	Docket No. CERCLA-08-2005-0004
)	
Camelot Cleaners, Inc.;)	
DCI, USA, Inc.; and)	
National Dry Cleaners, Inc.,)	
)	
SETTLING PARTIES)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement ("Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, further delegated to the Region 8 Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice and further delegated to the Directors of the Technical Enforcement and Legal Enforcement Programs. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

2. This Agreement is made and entered into by EPA and Camelot Cleaners, Inc., DCI, USA, Inc., and National Dry Cleaners, Inc., ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Camelot Cleaners West Fargo Site ("Site") located in West Fargo, Cass County, North Dakota. The Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Parties have limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. This Agreement has been negotiated in good faith and is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section. Settling Parties deny that they are responsible parties under CERCLA and deny that they are jointly and severally responsible for the Site response costs.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment to address their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in CERCLA or in regulations promulgated under CERCLA, shall have the meaning assigned to

them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Parties.

i. "Prudential" shall mean Prudential Insurance Company of America, the holder of Senior Secured Notes and Senior Floating Rate Notes referenced in Appendix A attached hereto.

j. "Prudential Debt" shall mean the indebtedness of the Settling Parties to Prudential as set forth in the Senior Note and Revolving Credit Agreement referenced in Appendix A attached hereto.

k. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

l. "Refinance" or "Refinancing" shall mean either the renegotiation of the Prudential Debt in existence as of the date of this Agreement or replacement of the Prudential Debt with a new debt agreement that offers a lower interest rate to the Settling Parties.

m. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

n. "Settling Parties" shall mean Camelot Cleaners, Inc., a North Dakota corporation, DCI, USA, Inc., a Nevada corporation and the parent corporation of Camelot Cleaners, Inc., and National Dry Cleaners, Inc., a Delaware corporation and parent corporation of DCI, USA, Inc.

o. "Site" shall mean the Camelot Cleaners West Fargo Superfund site, encompassing approximately one quarter of an acre, located at 602 Sheyenne Street, Cass County, West Fargo, North Dakota.

p. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12.(a) The Settling Parties shall pay to the EPA Hazardous Substance Superfund a total of \$200,000 payable in twelve monthly installments of \$16,666.67 due on the first day of each month beginning after the Effective Date of this Agreement.

(b) In the event Settling Parties Refinance the Prudential Debt with Prudential or any other lender within three (3) years of the Effective Date of this Agreement, Settling Parties shall pay the EPA Hazardous Substance Superfund fifty percent (50%) of the savings the Settling Parties realize from the Refinancing, provided however that such additional payment shall not exceed the sum of \$ 1,300,000. The savings realized by the Settling Parties from Refinancing will be computed as the difference between the monthly interest costs that the Settling Parties would pay under the Prudential Debt and the monthly interest costs the Settling Parties pay under the revised or new debt agreement(s). Subsequent to the Refinancing, a calculation will be made each month of the monthly payment otherwise required under the Prudential Debt and a calculation of the monthly payment required pursuant to the terms of the Refinanced debt agreement(s). If the specific monthly payment under the new debt agreement is less than the month payment under the Prudential Debt, then 50% of this difference will be paid to the EPA Hazardous Substance Superfund. This calculation process will continue each month until the Settling Parties have reimbursed the EPA Hazardous Substance Superfund \$1,300,000. Such payments shall be due and payable on a monthly basis beginning 30 days after the Refinancing. Thirty days prior to Refinancing, Settling Parties shall notify EPA in writing in accordance with Section XIII (Notices and Submissions), of the Refinancing and shall provide a complete copy of the new debt agreement (complete with all schedules and attachments). Each month the Settling Parties shall provide a complete copy of the calculation to EPA prior to submitting each payment as well as all other documentation supporting the calculation.

(c) In the event that Settling Parties do not refinance the Prudential Debt with Prudential or any other lender within three years of the Effective Date of this Agreement under more favorable terms,

the Settling Parties shall pay to the EPA Hazardous Substance Superfund \$150,000 payable in twelve monthly installments of \$12,500 due on the first day of the month beginning three years after the Effective Date.

13. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" or by Electronic Funds Transfer ("EFT"). Payments shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name (Camelot Cleaners West Fargo Site), the EPA Region and Site/Spill ID Number (08-DE), and the EPA docket number for this action. Checks shall be sent to:

Regular Mail: Mellon Bank
EPA Region 8
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:
EPA 360859
Mellon Client Service Center, Room 154-670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

or other such address as EPA may designate in writing or by wire transfer to the Federal Reserve Bank in New York, New York, with the following information :

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

At the time of payment, the Settling Parties shall send notice that such payment has been made to:

Carol Pokorny (8ENF-RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

14. The total amounts to be paid by Settling Parties pursuant to Paragraph 12 shall be deposited by EPA in the Camelot Cleaners West Fargo Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

15. Interest on Late Payments. If Settling Parties fail to make any payment required by Paragraph 12 by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due under Paragraph 12 are not paid by the required date, or if notice of refinancing as set forth under Paragraph 12 is not timely provided, Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$250 per violation per day that such payment or notice is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with the instructions set forth in Paragraph 13.

c. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Agreement, if Settling Parties fail to make stipulated penalty payments or refuse to comply with any term or condition of this Agreement, they shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties and their respective officers

and directors pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Parties shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, after signature of this Agreement by Settling Parties, based upon Settling Parties' ownership or operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance or pollutant or contaminant outside of the Site.

21. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 31(b), is false or, in any material respect, inaccurate.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTIES

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the North Dakota Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraph 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands,

and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. The Parties agree that Settling Parties are entitled, as of the Effective Date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Agreement. The “matters addressed” in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. CERTIFICATION

29. Each Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time such Settling Party executed this Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

Andrea Madigan (ENF-L)
Legal Enforcement Program
US EPA Region 8
999-18th Street, Suite 300
Denver, Colorado 80202-2466

As to Settling Parties:

David L. Erikson
CFO
National Dry Cleaners
11811 N. Tatum Blvd, Suite 3031
Phoenix, Arizona 85028

XIV. INTEGRATION/APPENDICES

31. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. Appendix A attached to and incorporated into this Agreement: is a list of the financial documents submitted to EPA by Settling Parties.

XV. ATTORNEY GENERAL APPROVAL AND PUBLIC COMMENT

32. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

33. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of

CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XVI. EFFECTIVE DATE

34. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 33 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

(SIGNATURES BEGIN ON NEXT PAGE)

IT IS SO AGREED:

Camelot Cleaners, Inc.

By: Richard K. Queen CEO
[Name & Title]

Nov. 19, 2004
DATE

DCI, USA, Inc.

By: Richard K. Queen CEO
[Name & Title]

Nov. 19, 2004
DATE

National Dry Cleaners, Inc.

By: Richard K. Queen CEO
[Name & Title]

Nov. 19, 2004
DATE

In the Matter of Camelot Cleaners West Fargo Site

Camelot Cleaners, Inc;
DCI, USA, Inc.; and
National Dry Cleaners, Inc.

Approval of Settlement Agreement by the United States Department of Justice

By: Tom Sansonetti
Thomas L. Sansonetti,
Assistant Attorney General
Environment and Natural Resources Division

Date: 12.30.04

U.S. Environmental Protection Agency
Region 8

By: Sharon L. Kercher
Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

DATE: 1-6-05

Michael T. Risner
Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

DATE: 1/5/05

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
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Camelot Cleaners West Fargo Site)	U.S. EPA Region 8
West Fargo, Cass County, North Dakota)	Docket No. CERCLA-08-2005-0004
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Camelot Cleaners, Inc.;)	
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)	PROCEEDING UNDER SECTION
SETTLING PARTIES)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

APPENDIX A
FINANCIAL INFORMATION

1. National Dry Cleaners Inc. Audited Financial Statements for the years 1999, 2000, 2001 and 2002.
2. National Dry Cleaners Inc. Unaudited Financial Statements for the year ending December 2003.
3. Camelot Cleaners Inc. Financial Statements for the years 1999, 2000, 2001, 2002 and 2003.
4. National Dry Cleaners Inc. Federal Income Tax Returns for the years 1999, 2000, 2001 and 2002.
5. Senior Note and Revolving Credit Agreement dated September 30, 2001.
6. Subordinated Note Agreement dated September 30, 2001.
7. Asset Sale Transactions of National Dry Cleaners Inc. from 2001 to 2003.
8. General Ledger Balance Report of National Dry Cleaners Inc. ending December 26, 2003.
9. Internal Schedule of Financial Covenant Compliance dated December 26, 2003.
10. DCI Management Group Ltd. Default Letter to Prudential Insurance Company dated October 30, 2003

11. Seasonality Curve, 2003 vs. 2002 and Budget.
12. Prudential Debt Roll-forward as of December 26, 2003.
13. Aging Accounts Payable as of June 27, 2003 and January 23, 2004.
14. Notes Receivable of National Dry Cleaners Inc. as of January 23, 2004.
15. Financial Statement for Businesses dated January 27, 2004.
16. Aging Accounts Receivable of National Dry Cleaners Inc. subsidiaries dated January 28, 2004.
17. DCI USA Inc. correspondence to EPA Region 8 dated February 9, 2004
18. National Dry Cleaners Inc. correspondence to EPA Region 8 dated June 30, 2004.